

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

PENNY A. ONEAL,)	
)	
Plaintiff,)	
)	
v.)	
)	1:16CV253
NANCY A. BERRYHILL, Acting)	
Commissioner of Social Security,)	
)	
Defendant.)	

ORDER

On August 2, 2017, in accordance with 28 U.S.C. § 636(b), the Recommendation of the United States Magistrate Judge was filed and served on the parties in this action, and a copy was given to the court.

Within the time limitation set forth in the statute, counsel for Plaintiff objected to the Recommendation. The court has made a *de novo* determination which is in accord with the Magistrate Judge’s Recommendation. None of these objections has merit, however, the court pauses to mention one in particular.

Specifically, Plaintiff contends for the first time that the ALJ erred in failing to resolve a conflict between the vocational expert (“VE”) testimony and the Dictionary of Occupational Titles (“DOT”). (ECF No. 17 at 2-5.) This objection lacks merit for several reasons. First, issues, such as this one, “raised for the first time in objections to the magistrate judge's recommendation[,] are deemed waived.” Deaver v. Colvin, No. 5:13cv05776, 2014 WL 4639888, at *7 (S.D. W. Va. Sept. 16, 2014) (unpublished) (citations omitted). Second, contrary to Plaintiff’s position, the VE resolved any conflict by noting that the job of hand

packager would be reduced based on the standing and walking requirement for four hours per day, and that the other jobs remained unchanged.¹ (Tr. 53.) Third, even assuming Plaintiff is correct, which is not the case, any error is harmless because the ALJ still found, that based on VE testimony, there were 55,000 jobs nationally for the job of hand packager. (Id.) See Hicks v. Califano, 600 F.2d 1048, 1051 (4th Cir. 1979) (“We do not think that the approximately 110 jobs testified to by the vocational expert constitute an insignificant number.”) The court therefore adopts the Magistrate Judge’s Recommendation.

IT IS THEREFORE ORDERED that Plaintiff’s Motion for Judgment on the Pleadings (ECF No. 11) is DENIED, that Defendant’s Motion for Judgment on the Pleadings (ECF No. 13) is GRANTED, that the final decision of the Commissioner is upheld, and that this action is dismissed with prejudice. A Judgment dismissing this action will be entered contemporaneously with this Order.

This, the 5th day of September, 2017.

/s/ Loretta C. Biggs
United States District Judge

¹ Transcript citations refer to the Administrative Transcript of Record filed manually with the Commissioner’s Answer. (ECF No. 8.)